

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1277 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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HANSABEN TARUNBHAI SHAH

Versus

STATE OF GUJARAT

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Appearance:

Shri K.M.Patel, Advocate, for the Petitioner.

Shri A.G.Uraizee, Assistant Government Pleader, for the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 18/09/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Ahmedabad (respondent No.2 herein) on 17th October 1987 under Section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in

appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the Appellate Authority for convenience) on 28th November 1989 in Appeal No.Ahmedabad-29 of 1988 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 808.77 square metres.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under Section 6 (1) of the Act with respect to his holding within the urban agglomeration of Ahmedabad as also within the urban agglomeration of Bombay. That form was duly processed by respondent No.2. After observing necessary formalities under Section 8 of the Act, by his order passed on 17th October 1987 under sub-section (4) thereof, respondent No.2 declared the petitioner's holding to be in excess of the ceiling limit by 808.77 square metres. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in appeal before the Appellate Authority under Section 33 of the Act. It came to be registered as Appeal No.Ahmedabad-29 of 1988. By the order passed on 28th November 1989 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure-B to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. The property within the urban agglomeration of Bombay was a residential flat. It has been rightly excluded by respondent No.2 from the petitioner's holding as transpiring from the impugned order at Annexure-A to this petition.

4. The property at Ahmedabad was shown to be admeasuring 1920.87 square metres. A residential house and a garage were found standing thereon. The residential house was found in existence before coming into force of the Act and it was found to have been constructed after obtaining the necessary building permission from the local authority. The constructed area together with the land appurtenant and the additional land appurtenant thereto was found to be to the tune of 993.05 square metres. The garage was also found to have been constructed after obtaining the necessary building permission from the local authority.

This area together with the land appurtenant thereto was found to be to the tune of 112.10 square metres. The constructed area qua the garage was excluded by respondent No.2 from the holding of the petitioner and rightly so. Respondent No.2 however did not exclude from the holding of the petitioner the area of the house property together with the land appurtenant and the additional land appurtenant thereto. It was required to be excluded from the holding of the petitioner in view of the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 Supreme Court at page 1567.

5. In view of my aforesaid discussion, the total area required to be excluded from the holding of the petitioner qua the property in Ahmedabad would be to the tune of 1105.15 square metres. The total area of the property in Ahmedabad is stated to be 1920.87 square metres. After excluding the constructed area from his holding, what would remain would be the area of 815.72 square metres. That would be the holding of the petitioner. That is very much within the ceiling limit of 1000 square metres prescribed for the urban agglomeration of Ahmedabad under the Act. In that view of the matter, the impugned orders at Annexures-A and B to this petition cannot be sustained in law.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad on 17th October 1987 at Annexure-A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 28th November 1989 in Appeal No.Ahmedabad-29 of 1988 at Annexure-B to this petition is quashed and set aside. It is hereby declared that the petitioner's holding is not in excess of the ceiling limit. Rule is accordingly made absolute with no order as to costs.

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